# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 28

### **NEVADA POWER COMPANY**

**Employer** 

and

Case 28-RC-6186

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 396, AFL-CIO<sup>1</sup>

#### **Petitioner**

### DECISION AND DIRECTION OF ELECTION

The Petitioner seeks an election within a unit comprised of the dispatchers, senior dispatchers, transmission dispatchers, distribution dispatchers, trouble dispatchers, transmission schedulers, and operations methods trainers employed by the Employer at its Las Vegas and Clark County, Nevada facilities. Contrary to the Petitioner, the Employer contends that the individuals sought to be represented by the Petitioner are supervisors within the meaning of Section 2(11) of the Act, because they responsibly direct employees and assign work using independent judgment.

For the reasons discussed below in detail, I conclude that the employees in the petitionedfor unit are not statutory supervisors principally because their authority to assign and to direct field employees does not involve the use of independent judgment, but rather is virtually routine in nature and carried out according to comprehensive regulations. Therefore, I am directing an election in the petitioned for unit.

### **DECISION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

- 1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2. **Jurisdiction:** The parties stipulated, and I find, that the Employer, Nevada Power Company, a Nevada corporation, maintains an office and place of business in Las Vegas, Nevada, and is a public utility that provides service to customers in Nevada and California.

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<sup>&</sup>lt;sup>1</sup> The Petitioner's name appears as amended at hearing.

During the 12-month period ending May 28, 2003, the Employer received gross revenues in excess of \$250,000, and during the same period of time, provided services in excess of \$50,000 to customers outside the State of Nevada. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purpose of the Act.

- 3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
- 4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5. **Unit Finding:** The only issue presented in this case is whether the employees sought by the Petitioner are supervisors within the meaning of the Act. For the reasons described more thoroughly below I have concluded that the employees sought in the petitioned-for unit are not supervisors and, accordingly, shall direct an election in the unit found appropriate herein.

### A. Background

The Employer is a public utility engaged in the generation and distribution of electrical power to consumers in the State of Nevada. It transports electricity through its transmission and distribution systems. Electrical energy is transmitted from power plants to substations via transmission lines and then from the substations to consumers over distribution lines.

Sometime in 1998, the Employer merged with a holding company, Sierra Pacific Resources (Sierra Resources). Upon completion of the merger, Sierra Resources acquired ownership of the stock of the Employer and that of Sierra Pacific Power (Sierra Power). Sierra Power employees are represented by the International Brotherhood of Electrical Workers, Local 1245 (Local 1245). The Sierra Resources executive hierarchy consists of Chief Executive Officer Walt Higgins, Executive Director Carolyn Cowan, and Regional Transmission Director for Northern and Southern Nevada Mark Shank. Mary Jane Snow serves as one of the Employer's human resources representatives for both the Employer and Sierra Power.

The Employer's transmission department, which consists of transmission dispatchers and senior transmission dispatchers, deals with voltages above 69 kilovolts. The distribution department, consisting of trouble dispatchers, distribution dispatchers, transmission schedulers and operations methods trainers, is responsible for voltages below 69 kilovolts. All of these employees work at the Employer's Desert Inn Road facility in Las Vegas, Nevada.

Gary Dawes is the Employer's team leader and first line supervisor of the transmission department employees. Dawes is on call 24 hours a day, 7 days per week to deal with any emergencies and answer any questions that the transmission dispatchers may have. The department includes six senior dispatchers and two dispatchers, two transmission schedulers, and one operations methods trainer. According to Dawes, the schedulers and trainer work mostly on

their own. Dawes' immediate superior is that of a second level manager. However, since that position is vacant, Dawes currently reports to Regional Transmission Director Shank.

Marvis Poole is the Employers' team leader and first line supervisor of the distribution department. The distribution department includes seven senior dispatchers, three dispatchers, and four trouble dispatchers. Poole reports to Tom Rice, Manager of Distribution and Operation. Rice's immediate superior is Greg Brewery, Director of Distribution Electrical Services in Southern Nevada. Brewery reports to Matt Davis, Vice President of Distribution Operations, Davis reports to the Employer's President Shamey, who in turn reports to Sierra Resources Chief Executive Officer Walt Higgins.

The Petitioner has had a long-term collective-bargaining relationship with the Employer dating back to at least 1990. The parties' most current agreement, which is scheduled to expire in February 2005, covers numerous job classifications in the Employer's clerical, transmission, distribution, and generation departments located in Clark and Nye Counties, Nevada. In August 2002, the Petitioner, along with Local 1245, negotiated an agreement with the Employer and Sierra Power that allows the Employer's employees and those of Sierra Power to transfer to and from each entity.

## B. Transmission Dispatchers and Senior Transmission Dispatchers

Transmission dispatchers and senior transmission dispatchers, collectively referred to as transmission dispatchers, essentially perform the same job functions. The record reflects that the main difference between a dispatcher and a "senior" dispatcher is simply experience on the job. Within the transmission department the Employer utilizes the terms "reliability dispatcher" and "economic dispatcher" to refer to some of its dispatchers. However, these job descriptions are purely informal and are not considered official. Transmission dispatchers are on duty 24 hours a day, 7 days a week and work 12-hour shifts on a 5-week rotating schedule. The record is silent as to the starting and ending times of their shifts. Their typical 5-week work schedule consists of four days on with two days off, three nights on and two days off, four days on and two days off, and three days on. Their fifth week is considered their training week. To assist them in the performance of their job duties, transmission dispatchers utilize several job manuals, including the Employer's S.A.F.E. Work Practices Manual and Emergency Operating Plan; the Bulk Power Dispatch Standard Operating Procedures; Western Electrical System Coordinating Council (WSCC) Handbook; Federal Energy Regulatory Commission (FERC) Manual; and the North American Electric Reliability Council (NERC) Handbook. The Employer is a member of both WSCC and NERC. WSCC, NERC, and FERC are governmental entities whose purpose is to ensure the integrity of the United States' electrical power generating system. Transmission dispatchers, who must obtain a certification every five years to retain their job, are tested on the contents of the WSCC and NERC manuals. Transmission dispatchers, who consider these manuals the "Bible" with respect to their work, are expected to apply the standards contained in these manuals on a daily basis. They can be subject to discipline for failing to follow the handbook provisions. The Employer's ongoing training ensures that transmission dispatchers apply the same steps in dealing with similar problems that they encounter.

Transmission dispatchers use their experience to monitor the electrical grid on a computer program known as System Control and Data Acquisition (SCADA) to ensure that the electrical system is running within normal parameters. They must also ensure that the voltage on the electrical system stays within acceptable limits and make adjustments if it is too high or too low. Transmission dispatchers are also responsible for facilitating routine and emergency maintenance and construction activities with field personnel, via switching orders, and for monitoring the entire electrical transmission and generation system. Two transmission dispatchers are on duty at all times. They check the flow of electricity through the system hourly; communicate with the Employer's marketing department on a regular basis; purchase power in emergency situations on a yearly or more infrequent basis; and keep a daily log of their activities.

A switching situation generally arises when a request is made in the field indicating that field personnel want to perform maintenance work on, or repair, a specific piece of equipment. Transmission dispatchers review that request and make a determination regarding whether it is feasible for the work to be performed at the proposed time. Transmission dispatchers check to ensure that the work will not adversely impact the electrical system. They generally do not consult with Dawes regarding the feasibility of a switching request. If the transmission dispatcher concludes that the request is feasible, he will schedule the work and prepare a detailed switching procedure that indicates the steps that must be followed in taking out equipment for maintenance or repair. Generally, another transmission dispatcher will review a switching order to ensure that the switching order is correct. Transmission dispatchers also grant clearances, which are assurances to field personnel that a particular line or piece of equipment is deenergized.

If there is a break in service caused, for example, by a vehicle hitting a pole or an airplane striking a transmission line, transmission dispatchers are required to restore service as soon as possible. They can restore the system in such circumstances by using either their computer system or by contacting field employees to repair the problem. The record establishes that in interacting with field employees, transmission dispatchers do not have the authority to tell them how to do their work. They simply inform the field employees the end result that is required of the particular job and the steps that need to be taken to achieve that result. If it is necessary to utilize field employees to correct the problem, the transmission dispatcher calls a first line supervisor from a list kept at his desk. The supervisor then will call members of his crew should the circumstances warrant. In the event field employees are utilized to rebuild or repair the system, overtime may be required. When overtime is required, transmission dispatchers select employees from the overtime equalization list and make selections in descending numerical order.

Transmission dispatchers do not have the authority to hire, schedule, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of employees or effectively to recommend such action.

# C. Trouble Dispatchers, Distribution Dispatchers, and Senior Distribution Dispatchers

Trouble dispatchers receive trouble or outage reports from customers or the Employer's telephone operators. Using their experience, they assess the severity of the problem and contract a troubleshooter (lineman) who is sent to locate the source of the problem. If the trouble report occurs after normal work hours, the trouble dispatcher will call a team leader or obtain the troubleshooters' names from a computerized overtime equalization list. When the troubleshooter locates the problem, he relays the information to the trouble dispatcher. At no time during the interaction between the trouble dispatcher and the troubleshooter is the trouble dispatcher considered the troubleshooter's superior. In this regard, the troubleshooter is authorized to disconnect power and repair the problem as he sees fit, even though the trouble dispatcher may disagree with him. If the troubleshooter is able to repair the problem by himself, e.g. resetting a customer's circuit breaker, he will do so. If the problem is severe, the troubleshooter then contacts a distribution dispatcher.

Distribution dispatchers and senior distribution dispatchers, collectively referred to as distribution dispatchers, perform the same functions and are responsible for monitoring the Employer's distribution lines. They work 12-hour shifts, with 7 days on and 7 days off. Distribution dispatchers monitor the SCADA system for overloading, underloading, or voltage problems. Distribution dispatchers, as well as the trouble dispatchers, use their experience and rely mainly on the Employer's Operation and Maintenance Manual, S.A.F.E. Work Practices Manual, or the Emergency Operating Plan in carrying out their job responsibilities. To the extent that a distribution or trouble dispatcher's solution to resolving a problem conflicts with the procedures contained in these manuals, the manuals take precedence. Distribution dispatchers and trouble dispatchers can be subject to discipline for failing to abide by the procedures contained in these manuals.

When a distribution dispatcher receives a call from a troubleshooter, he will consult his grid maps, evaluate the problem based on his experience, and formulate a plan to restore power. If the distribution dispatcher can resolve the problem through switching, he will do so by isolating the faulty equipment or damaged line. If not, he discusses his plan for restoring power with the team leader or the troubleshooter. The distribution dispatcher does not instruct the team leader or the troubleshooter as to how the work should be performed, but simply suggests the order in which the work should be done. The team leader or troubleshooter is free to disagree with the distribution dispatcher's assessment of the problem and proceed with his own plan.

Trouble dispatchers and distribution dispatchers do not have the authority to hire, schedule, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of employees or effectively to recommend such action.

### D. Transmission Schedulers and Operations Methods Trainers

The only evidence presented at the hearing with respect to the transmission schedulers and operations methods trainers consisted of testimony by Dawes and job descriptions of the two classifications that were introduced by the Petitioner. Dawes testified that the trainer constantly

works with the transmission dispatchers in order to keep them current with new rules and regulations that are forthcoming on a regular basis from the Federal Energy Regulatory Committee and the North American Electric Reliability Council. The transmission scheduler position is described as follows:

Pre-schedule maximum use of the Transmission System while staying within the established system reliability margins, through the use of existing Transmission Contracts and Sales using the Open Access Tariff. Maintain accurate logs to ensure Reliability Measurements are accurate.

The operations methods trainers' position is described as follows:

Provide training to System Dispatchers on current/future NERC/WSCC power system operating policies, practices, and procedures, NPC "unique" system operating system policies, practices, and procedures, and computer systems (e.g. ESCA EMS, OASIS). Collect, maintain and submit reliability data (e.g. WSCC Reliability Management System) to WSCC, NERC, Security Coordinator(s), regulatory authorities as required.

### E. Legal Analysis and Determination

Section 2(11) of the Act defines the term "supervisor" as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

An individual who possesses any of the supervisory indicia listed above will be deemed to be a supervisor only if the authority is exercised with independent judgment on behalf of the employer and not in a routine manner. See *Panaro & Grimes, d/b/a Azusa Ranch Market*, 321 NLRB 811 (1996), citing *Chicago Metallic Corp.*, 273 NLRB 1677 (1985), and *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority only in a routine, clerical, perfunctory or sporadic manner" will not be found to be a supervisor. Leadmen and other "minor supervisors" are not necessarily statutory supervisors. *George C. Foss Co.*, 270 NLRB 232, 234 (1984), enf. 752 F. 2d 1407 (9<sup>th</sup> Cir. 1985). In determining whether an individual is a supervisor, the Board has a duty not to construe supervisory status too broadly, because the employee who is found to be a supervisor is denied rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433 (1981). The burden of proving that an individual is a supervisor rests on the party alleging such status. See

Adco Electric, 307 NLRB 1113 (1992); Tucson Gas & Electric Company, 241 NLRB 181 (1979); and California Beverage Co., 283 NLRB 328 (1987). The Board and the courts have implicitly and explicitly relied on the principle that the exercise of even critical judgment by employees based on their experience, expertise, know-how, or formal training and education does not, without more, constitute the exercise of supervisory judgment. See Providence Hospital, 320 NLRB 717, 725 (1996), enfd. sub nom. Providence Alaska Medical Center v. NLRB, 121 F.3d 548 (9th Cir. 1997).

In NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001), the Supreme Court upheld the Board's rule that the burden of proving statutory supervisory status rests with the party asserting it. Although the Court rejected the Board's interpretation of "independent judgment" in Section 2(11)'s test for supervisory status, i.e., that registered nurses will not be deemed to have used "independent judgment" when they exercise ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards, it recognized the Board's discretion to determine, within reason, what scope or degree of "independent judgment" meets the statutory threshold. The Court acknowledged that "independent judgment" is ambiguous with respect to the degree of discretion required. It also recognized that judgment may be reduced below the statutory threshold by detailed regulations issued by the employer. On this point, the Court cited with approval the Board's decision in Chevron Shipping Co., 317 NLRB 379, 381 (1995), where the Board had concluded that although "licensed officers were imbued with a great deal of responsibility, their use of independent judgment and discretion is circumscribed by the master's standing orders, and the Operating Regulations, which require the watch officer to contact a superior officer when anything unusual occurs or when a problems occur."

More recently, in *Dynamic Science*, *Inc.*, 334 NLRB No. 57 (2001), the Board applied the Court's directives in the *Kentucky River*, and found that the employer failed to sustain its burden of establishing that artillery test leaders possessed statutory supervisory authority in their direction of other employees. Citing *Chevron Shipping*, the Board found that the test leaders "role in directing employees" was extremely limited and circumscribed by detailed orders and regulations issued by the employer and other standard operating procedures "and, thus, the degree of judgment exercised by the test leaders" fell below the threshold required to establish statutory supervisory authority.

The Board has had occasion to address the supervisory status of individuals who oversee the transmission and distribution of power in electric utilities. The most significant case appears to be *Mississippi Power and Light*, 328 NLRB 965 (1999), where the Board overruled its holding in *Big Rivers Electric Corp.*, 266 NLRB 380 (1983), and held that employees who monitor electrical power distribution are not supervisors because their authority to assign and direct field employees does not involve the use of independent judgment within the meaning of Section 2(11) of the Act. The Board, in *Mississippi Power and Light*, concluded that the judgment exercised by the dispatchers in selecting or designing switching sequences was a function of the dispatch work, based on their training, knowledge, and experience, and did not constitute the exercise of independent supervisory judgment. The Board found that the dispatcher's communication with field employees regarding the implementation of switching sequences did not entail the exercise of statutory independent judgment, but rather the almost

routine or clerical relay of complex schemata. Id. at 974. Similarly, in *Arizona Electric Power Cooperative*, *Inc.*, 250 NLRB 1132, fn. 1 (1980), which involved almost identical functions performed by the transmission dispatchers and senior transmission dispatchers in the instant matter, the Board found that load dispatchers and senior load dispatchers do not direct field employees using independent judgment, but rather imparted information to, and thereby coordinated activities of, other employees.

Based on the authority cited above, I conclude that the transmission dispatchers, trouble dispatchers, and distribution dispatchers are not supervisors within the meaning of Section 2(11) of the Act. In reaching this conclusion, I rely on a number of factors. First, with respect to the statutory indicia of supervisory status, other than assignment and direction of work, the record evidence is uncontroverted that none of the individuals in the petitioned-for unit has the authority to hire, schedule, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of employees or effectively to recommend such actions.

Second, with respect to the assignment of work to field employees, the transmission dispatchers' role is limited to confirming whether switching request are feasible for the requested time and scheduling a detailed switching procedure to assure the equipment to be worked on is taken out of the power grid. With breaks in service, they may be required to use field employees, but must call the first line supervisor based on a list kept at the desk. They do not instruct the field employees on how to do their work. Similarly, the trouble and distribution dispatchers, in carrying out their role related to trouble or outages, will first assess the situation and then, if necessary, contact field team leaders or troubleshooters' from names on computerized lists to dispatch crews to the trouble spots and resolve the problem. The troubleshooters do not view the dispatcher as their superior. As to the assignment of work after normal hours, the dispatchers follow Employer-maintained overtime priority lists which assure equalization of overtime among the field employees. I find, in these circumstances, that the dispatchers' role in calling on field employees to perform switching, troubleshooting, or power restoration, appears to occur within carefully drawn parameters which lend little in the way of exercise of supervisory independent judgment. *Mississippi Power*, supra, at. 973.

Third, similar to the distribution dispatchers and the system dispatchers in *Mississippi Power and Light*, the transmission dispatchers, trouble dispatchers, and distribution dispatchers in carrying out their roles in either maintaining or restoring power in conjunction with the use of field employees, must rely heavily on their technical know-how and expertise. Most of the communications they have with field employees are through either first line field supervisors, team leaders, or on-call troubleshooters. The communications are remote and not face-to-face, as the dispatchers work within the facility while the trouble shooters and crews are in the field. It would appear that the solutions for problems or emergencies are often arrived at on the basis of a collegial effort with the individual in the field serving as the on-site eyes of the dispatchers. More importantly, much of the work to be performed must be done according to the detailed manuals and handbooks, treated as "Bibles," which often dictate the manner and means something is to be done. While these dispatchers may exercise substantial independent judgment in applying their own technical expertise to proper switching procedures or other resolutions associated with either planned or emergency outages, this does not in itself constitute Section 2(11) supervisory judgment. Id. at 973. In this respect, I note that although severe

consequences might flow from the dispatchers' misjudgments in their own work, the Board does not view this as necessarily establishing that their judgments are supervisory. See *Cooper/T*. *Smith*, *Inc.* v. *NLRB*, 177 F.3d 1259 (11th Cir. 1999) ("[d]irecting others in work that may be complex and potentially dangerous is not enough to elevate an employee to supervisory status.")

Fourth, with respect to the transmission schedulers and operations methods trainers, the Employer has failed to show that they possess any of the supervisory indicia contained in Section 2(11) of the Act. In this regard, the Employer states in its post-hearing brief that should there be any question as to the status of these two positions, the case should be remanded to the Hearing Officer to take additional testimony with respect to their duties and responsibilities. I decline, however, to grant the Employer's request. The Hearing Officer afforded the parties the opportunity to present all testimony and evidence relevant to the issues, including the Employer's assertion that transmission schedulers and operations methods trainers were statutory supervisors. The Employer chose not to do so. In these circumstances, I find that the Employer has failed to sustain its burden that the transmission schedulers and operations methods trainers are supervisors within the meaning of Section 2(11) of the Act. *Adco Electric*, supra. I shall, therefore, include them in the unit found appropriate herein.

Accordingly, based on the record evidence, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All dispatchers, senior dispatchers, transmission dispatchers, distribution dispatchers, trouble dispatchers, transmission schedulers, and operations methods trainers employed by the Employer at its Las Vegas, Clark County, Nevada facilities.

**EXCLUDED**: All other employees, guards, and other supervisors as defined in the Act.

There are approximately 25 employees in the unit found appropriate.

### DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls.

Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

# INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 396, AFL-CIO

### LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Region 28 Resident Office, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101, on or before July 7, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

### RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by July 14, 2003. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 30<sup>th</sup> day of June 2003.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director National Labor Relations Board - Region 28

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